



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12305611

Date: JUL. 23, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner intends to work as a geriatric nurse, and seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

At the time of filing, the Petitioner explained that she will have a “positive health and educational impact on both the areas where she will practice and the American people, as she tries to fulfill her missions to help assist with elder care and teach these techniques to the field.” She also stated, “I would bring to the United States 20 years of experience in the field, in addition to extensive training, including a specialization in Geriatrics and Gerontology from the [redacted] University of [redacted].” The Petitioner noted that in her previous work experience she initiated and developed a program aimed at decreasing the number of falls in a residential facility and helped diminish the severity of falls.

In response to the Director’s request for evidence (RFE), the Petitioner explained that there is a “shortage of experienced nurses, particularly nurses prepared to work with aging patients, at a time when people ages 65 and over are becoming an increasingly larger segment of the U.S. population.” The Petitioner further stated that her plan is to obtain a license in nursing and work as a geriatric nurse and will work in Florida with “elderly and immigrant patients” and “have the ability to train community health workers to help mitigate the shortage of healthcare professionals.”

On appeal, the Petitioner states that her “background and education, along with her particular experience and specialization in geriatrics, would enhance societal welfare and cultural enrichment.” Moreover, the Petitioner explains that “[e]very student or colleague or patient that [the Petitioner] impacts will potentially benefit part of the greater population.” The Petitioner submits articles discussing nursing in the United States and needs and changes in education in that field. She also explains that during her employment abroad, she implemented several policies and services. For example, she was part of the [redacted], which was a protocol guidance on the prevention of falls for the elderly residents in her facility. She also “prepared manuals and lectures to implement individualized care plans for patients.” The Petitioner also published articles regarding issues related to geriatric care in a website.

In addition, the record included letters of support from peers and co-workers that worked with the Petitioner explaining how she provided quality nursing care and improved the nursing operations at her employment abroad. Further, the Petitioner presented articles discussing the need for nurses in the United States, and how the specialization of geriatrics in nursing is underrepresented.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a bachelor’s degree from the University of [redacted] and a post-graduate degree from the [redacted] University of [redacted] Brazil.

Regarding the first prong of the *Dhanasar* framework, the Director concluded that the “record does not show that the petitioner’s proposed endeavor stands to sufficiently extend beyond her patients to impact her field of U.S. healthcare more broadly at the level commensurate with national importance.” While the record demonstrates that the Petitioner’s proposed work has substantial merit, for the reasons discussed below, the evidence is not sufficient to show this endeavor’s national importance.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

On appeal, the Petitioner contends that her “efforts will have a positive health and educational impact on both the areas where she will practice and the American people, as she tries to fulfill her mission to help assist with elder care and teach these techniques to the field.” The Petitioner further asserts that there is a nursing shortage and a growing demand for nurses that specialize in geriatrics. The Petitioner notes that she “prepared manuals and lectures to implement individualized care plans for patients,” that will be a “vital resource to general geriatric care in the United States and would reach far beyond just her patients.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. With respect to the Petitioner’s proposed care and treatment of patients, the record does not establish that her nursing work in her area would impact the geriatric field and healthcare industry more broadly, as opposed to being limited to the patients she serves. The Petitioner did not provide evidence of how her lectures and manuals will broadly impact her field. Although the lectures, manuals and policy change she made at her facility abroad may be useful to her patients, the record does not demonstrate that they were followed by other doctors or nurses or were made available outside of her patient care. This is also true for her proposed plan that is lacking sufficient evidence that her knowledge and care of elderly patients in Florida will reach other patients or the healthcare industry. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner’s nursing work does not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

The Petitioner provided a letter from [redacted] professor of [redacted] providing an analysis and advisory evaluation of the Petitioner’s request for a national interest waiver. [redacted] stated that the Petitioner would work in the U.S. in an area of substantial merit and national importance. Specifically [redacted] stated that “as the uncertainty of being able to supply the demand for nurses and nursing educators in the country increases, so does the need for U.S. to benefit from the expertise of a nurse and health care manager such as [the Petitioner] with an in-depth knowledge of the medical environment.” While [redacted] points out a high demand for nursing,

he did not provide sufficient information of how the Petitioner working as a nurse will have a national impact outside of caring for her patients.

Furthermore, the record does not include any information or evidence regarding any significant projected job growth attributable to her potential endeavor in geriatric nursing. The Petitioner has not shown benefits to the regional or national economy, or increasing job productivity would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work as a geriatric nurse does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.